

# ScyllaDB Proprietary Software License Agreement v. 1.0

The ScyllaDB database (the “Software”) is licensed to you under the following terms and conditions:

## LICENSES

Subject to and conditioned upon compliance with the terms and conditions of this Agreement, including the limitations, conditions, restrictions and obligations set forth below:

**Evaluation License.** For the Software designated as provided under an Evaluation License, ScyllaDB Inc. (“ScyllaDB”) grants you a non-exclusive, non-transferable, non-sublicensable, revocable, limited right to install and use the Software for 90 days period commencing as of the Effective Date, subject to the parameters contained in the applicable purchase order, for the sole purpose of evaluating the Software and determining whether you wish to purchase an Enterprise License (the “**Evaluation License**”).

**Development License.** For the Software designated as provided under a Development License, ScyllaDB grants you a non-exclusive, non-transferable, non-sublicensable, revocable, limited right to install and use the Software, subject to the parameters contained in the applicable purchase order, for the sole purpose of developing and testing the Software in order to determine its the compatibility to your internal systems (the “**Development License**”). For the avoidance of doubt, in case you wish to use the Software for any purpose other than as permitted under this Development License, you must first contact ScyllaDB and purchase an Enterprise License.

**Enterprise License.** For the Software designated as provided under an Enterprise License, ScyllaDB grants you a non-exclusive, non-transferable, non-sublicensable, revocable, limited right to install and use the Software, subject to the parameters contained in the applicable purchase order (the “**Enterprise License**”).

**Use Restrictions.** Under any of the licenses granted herein, you shall not: (a) transfer the Software or any portions of the Software to any other party except as expressly provided herein; (b) copy the Software or any portion thereof, except that you may make one copy of the Software for backup purposes, in object code form only, provided that the backup copy must include all copyright or other proprietary notices contained on the original; (c) reverse engineer, disassemble, or decompile the Software in any form or by any means; (d) modify or create derivative works of the Software; (e) incorporate the Software into the structure, machinery or controls of any aircraft, other aerial device, military vehicle, hovercraft, waterborne craft or any medical equipment; or (f) distribute, sell, sublicense or otherwise transfer or provide access to the Software to any third party, including, without limitation, provision of database management services through the Software.

## PROPRIETARY RIGHTS

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## **TAXES**

All prices for the Software and any services provided in connection therewith as stated in applicable order are exclusive of all federal, state and local excise, sales, use, value-added, occupational, levies, assessments, import duties and like taxes which may be imposed by any governmental entity in connection with any transaction contemplated by this Agreement and/or the purchase order (excluding any taxes assessed against ScyllaDB's net income).

## **CONFIDENTIALITY**

During the term of this Agreement and thereafter, the Parties (i) shall treat as confidential and proprietary all information which is identified as confidential or proprietary, or which can be reasonably deemed to be such, and which is disclosed by one Party to the other; (ii) shall not disclose such information to any third party, except for such party's employees and consultants which have a specific need to know such information for the purpose of this Agreement and only if such employees or consultants executed a confidentiality agreement protecting such information by terms no less stringent than those contained in this Section. The foregoing shall not apply to any information that the Party receiving such information can prove by reasonable written and dated records: (a) is already in the Party's possession, prior to the disclosure thereof, other than as a result of the breach of a legal or contractual obligation on the part of the receiving Party; (b) was lawfully received by such Party from a third party having rights to disclose, and under no confidentiality obligations known to such Party with respect to such information; (c) is or becomes a part of the public knowledge through no wrongful act of either Party; (d) is approved for release in writing by the Party to whom the confidential or proprietary information belongs; or (e) is or was developed independently by the receiving Party without reliance on, reference to or use of any information of the other Party, and without any breach of this Agreement, as evidenced by contemporaneous written documents.

## **DISCLAIMER OF WARRANTIES**

YOU AGREE THAT SCYLLADB HAS MADE NO EXPRESS WARRANTIES TO YOU REGARDING THE SOFTWARE AND THAT THE SOFTWARE IS BEING PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND. SCYLLADB DISCLAIMS ALL WARRANTIES WITH REGARD TO THE SOFTWARE; EXPRESS OR IMPLIED; INCLUDING; WITHOUT LIMITATION; ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE; MERCHANTABILITY; MERCHANTABILITY OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

## **LIMITATION OF LIABILITY**

TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT WILL SCYLLADB BE LIABLE TO YOU FOR ANY LOSS OF USE; INTERRUPTION OF BUSINESS; OR ANY DIRECT; INDIRECT; SPECIAL; INCIDENTAL; OR CONSEQUENTIAL DAMAGES OF ANY

KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT; TORT (INCLUDING NEGLIGENCE); STRICT PRODUCT LIABILITY OR OTHERWISE; EVEN IF SCYLLADB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

In no event shall the total cumulative liability of ScyllaDB, for all claims arising out of or relating to this Agreement, exceed the total amounts paid and due by Customer to ScyllaDB during the period of the 12 months preceding the date of the claim. The foregoing provision limiting the liability of ScyllaDB shall apply regardless of the form or cause of action, whether in contract or tort, or a breach of a fundamental term or condition.

## INTELLECTUAL PROPERTY INFRINGEMENT

**Indemnity Obligation and Conditions.** In the event that a legal action is brought against Customer to the extent that it is based on a claim that the Software infringes a U.S. patent or copyright of a third party, ScyllaDB shall provide Customer with legal defense at its own expense and pay for costs and damages awarded against Customer in such action or agreed to under a settlement, provided that: (i) Customer promptly provides ScyllaDB with a written notice of such legal action; (ii) Customer grants ScyllaDB complete authority over the legal defense and settlement negotiations; (iii) Customer fully cooperates with ScyllaDB with respect to such legal action; and (iv) no settlement with respect to such legal action shall be made without ScyllaDB's prior written approval.

Notwithstanding the above, ScyllaDB shall have no liability to defend and pay for any action pertaining to an infringement of intellectual property rights to the extent that the action: (i) is based on a modification of the Software modified not by ScyllaDB; (ii) results from Customer's failure to use an updated version of the Software; (iii) is based on a combination or use of the Software with any software, program or device, including without limitation software licensed under the terms of applicable open source licenses, not provided or approved by ScyllaDB; (iv) results from Customer's use of the Software following the termination of the Agreement.

THIS SECTION STATES SCYLLADB'S SOLE AND EXCLUSIVE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO AN INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

## EXPORT CONTROL

As required by the laws of the United States and other countries, you represent and warrant that you: (a) understand that the Software may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) are not located in a prohibited destination country under the EAR or U.S. sanctions regulations; (c) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use or transfer the Software for use in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the relevant government agency by regulation or specific license; (e) understand and agree that if you are in the United States and export or transfers the Software to

eligible end users, you will, to the extent required by EAR Section 740.17(e), submit semi-annual reports to the Commerce Department's Bureau of Industry and Security, which include the name and address (including country) of each transferee; and (f) understand that countries including the United States may restrict the import, use, or export of encryption products (which may include the Software and the components) and agree that you shall be solely responsible for compliance with any such import, use, or export restrictions.

## TERMINATION OF THIS AGREEMENT

You may terminate this Agreement by destroying all copies of the Software. Your right to use the Software shall end immediately if you fail to comply with any of the terms set forth in this Agreement, in which case you shall destroy all copies of the Software. This Agreement shall immediately terminate upon the termination or expiration of the Support Services Agreement between Customer and ScyllaDB.

## GENERAL PROVISIONS

**Assignment.** The Customer may not assign, transfer, or otherwise dispose of this Agreement or any of its rights, interest, or obligations hereunder without the prior written consent of ScyllaDB. ScyllaDB may transfer or assign this agreement to: (a) an affiliate of the Company; or (b) an acquirer of all or substantially all of the shares or assets of such party through change of control event. Any assignment of this Agreement in violation of this provision shall be null and void.

**Notices.** All notices and demands hereunder shall be in writing and shall be served by at least one of the following: (1) personal service; (2) registered or certified mail at the address of the receiving party set forth in this Agreement (or at such different address as may be designated by such Party by written notice to the other Party); (3) electronic mail with electronic confirmation and followed immediately by (1) and/or (2).

**Governing Law and Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of Israel, without giving effect to its conflicts of laws provisions, and the Courts situated in Tel Aviv, Israel shall have sole and exclusive jurisdiction over the Parties and any conflict and/or dispute arising out of, or in connection to, this Agreement.

**Integration.** This Agreement sets forth the entire agreement between the parties on the subject hereof and supersedes any and all previously or currently existing oral or written agreements, understandings, memoranda, letters of intent, or representations on the subject matter hereof, as of the Effective Date. This Agreement may be amended only by a writing signed by the duly empowered representatives of the Parties.

**Severance.** If any one or more of the terms of this Agreement shall for any reason be held to be invalid or unenforceable, such term shall be construed in a manner to enable it to be enforced to the extent compatible with applicable law. Any determination of the invalidity or unenforceability of any provision of the Agreement shall not affect the remaining provisions hereof unless the business purpose of this Agreement is substantially frustrated thereby.

**Headings.** The titles and headings of the various sections and paragraphs in this Agreement are intended solely for reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of this Agreement.



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